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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: JUUL LABS, INC., MARKETING,
SALES PRACTICES, AND PRODUCTS
LIABILITY LITIGATION

Case No. 19-md-02913-WHO

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT AND
PROPOSED AGENDA**

This Document Relates to:

ALL ACTIONS

Pursuant to Civil Local Rule 16-10(d) and the Court’s September 21, 2020 Minute Order (ECF No. 993), counsel for Defendants Juul Labs, Inc. (“JLI”), Altria,¹ Director Defendants,² E-Liquid Defendants,³ Retailer Defendants,⁴ and Distributor Defendants⁵ (collectively “Defendants”), and Plaintiffs’ Co-Lead Counsel (“Plaintiffs”) (collectively referred to herein as

¹ “Altria” refers to Altria Group, Inc., and the Altria-affiliated entities named in Plaintiffs’ Consolidated Class Action Complaint and Consolidated Master Complaint (collectively, “Complaints”), *see* ECF Nos. 387, 388.

² “Director Defendants” refers to Messrs. James Monsees, Adam Bowen, Nicholas Pritzker, Hoyoung Huh, and Riaz Valani.

³ “E-Liquid Defendants” refers to Mother Murphy’s Labs, Inc., Alternative Ingredients, Inc., Tobacco Technology, Inc., and Eliquitech, Inc.

⁴ “Retailer Defendants” refers to Chevron Corporation, Circle K Stores, Inc., Speedway LLC, 7-Eleven, Inc., Walmart, and Walgreen Co.

⁵ “Distributor Defendants” refers to McLane Company, Inc., Eby-Brown Company, LLC, and Core-Mark Holding Company, Inc.

the “Parties”) respectfully provide this Joint Case Management Statement in advance of the Further Case Management Conference scheduled for October 16, 2020.

I. PARTICIPANT INFORMATION

The conference will proceed via Zoom, and the Parties will not appear in person. Anyone who wishes to attend the conference must log in using the information available at: <https://www.cand.uscourts.gov/judges/orrick-william-h-who/>.

II. ISSUES TO BE DISCUSSED BELOW AND PROPOSED AGENDA

1. Status of Case Filings and Dismissals
2. Case Management Matters
3. Rule 26(f) Report
4. Discovery Status
5. ADR Status

III. STATUS OF CASE FILINGS AND DISMISSALS

As of October 13, 2020, 1130 cases are pending in this MDL, naming 82 defendants. A list of these defendants is attached as **Exhibit A**. To date, 963 personal injury cases and 131 government entity cases (including 93 school districts, 18 counties, 1 city, and 19 tribes) have been filed in this MDL. 75 MDL plaintiffs have voluntarily dismissed their cases (71 personal injury plaintiffs and 4 class plaintiffs).

There are 223 complaints pending in JCCP 5052, which is assigned to Judge Ann I. Jones of the Los Angeles Superior Court as the Coordination Trial Judge. There are 58 government entity cases, including 52 school districts and 162 personal injury cases brought on behalf of over 2200 individual personal injury plaintiffs. There are 16 defendants named in those cases.

The Parties are also aware of 14 cases filed by state attorneys general specifically: California, Illinois, Hawaii, New York, North Carolina, Mississippi, Minnesota, Washington D.C., Arizona, Pennsylvania, New Mexico, Massachusetts, Colorado, and Washington. Plaintiffs’ Liaison Counsel continue their outreach to various State Attorneys General to discuss cooperation with this MDL. Counsel for Plaintiffs and Defendants will discuss a process for updating the Court and the Parties regarding matters of significance in the “Related Actions”, as

1 required pursuant to the Coordination Order (CMO 9 at 1, 3), including whether such updates
 2 should be provided as part of the Joint CMC Statements or on the first business day of each
 3 month (as is currently in the CMO).

4 **IV. CASE MANAGEMENT MATTERS**

5 **A. Bellwether Jurisdiction Issues**

6 Pursuant to the Court’s September 21, 2020 Minute Order, the Parties continued to meet
 7 and confer and attempt to “agree on a solution that allows for the trial of representative cases over
 8 which the Court can assert jurisdiction in the Northern District of California as bellwether.” (ECF
 9 No. 993 at 2.) The Parties have been unable to reach an agreement on such a solution and
 10 therefore propose each Party file simultaneous separate briefs of no more than 15 pages on
 11 October 22, 2020.

12 In response to the Court’s request for input on the mechanical procedure for the Court’s
 13 random selections for bellwether candidates, the Parties will participate in a conference call with
 14 Brown Greer, the vendor charged with maintaining the fact sheets, who we expect has the
 15 technology and experience to do randomized selections.

16 **B. Government Entity Bellwether Selection Protocol**

17 The Parties are meeting and conferring regarding the appropriate procedures for selecting
 18 the Government Entity Bellwethers. While the Parties are making progress, they request
 19 additional time to either reach agreement on a selection procedure or narrow the issues that must
 20 be presented to the Court for resolution. Subject to the Court’s approval, the Parties propose
 21 submitting either agreed-upon or disputed procedures as part of the Case Management
 22 Conference for the November status conference.

23 **C. Class Bellwethers**

24 As discussed in previous case management statements, the Parties to the class action have
 25 agreed that any California subclass and federal claims remaining after the Court rules on motions
 26 to dismiss will be among the initial summary judgment, class certification, and trial bellwether
 27 candidates. The Parties to the class action reserved their rights to propose additional state-
 28 subclass claims for inclusion in the bellwether pool, but agreed that the later inclusion of any such

1 additional subclass claims will not impact or delay the schedule for adjudicating and resolving
 2 (through summary judgment, class certification, and/or trial) the claims asserted by the proposed
 3 California or federal subclasses.

4 Plaintiffs continue to advocate for Defendants' prompt identification of additional state
 5 subclass claims for consideration as class bellwethers, and remain available to confer with
 6 Defendants in this regard. Plaintiffs have indicated that they will likely amend the Consolidated
 7 Class Action Complaint to add or dismiss class representatives and/or to address the Court's
 8 rulings on the pending motions to dismiss, but have continued to engage with Defendants on the
 9 scope of discovery they seek from the various class representatives. Defendants are considering
 10 whether additional subclasses are appropriate, and believe a settled pleading and further
 11 information (including basic discovery from the proposed class representatives and the receipt of
 12 any amended complaint) should inform this discussion.

13 **V. 26(F) REPORT**

14 Plaintiffs and Defendants continue Rule 26 discussions. The parties had several meet-
 15 and-confer sessions and offer the following report:

16 **A. Initial Disclosures**

17 Plaintiffs and Defendants are continuing to meet and confer regarding supplementing
 18 certain Defendants' Initial Disclosures with the production of insurance policy documents, to the
 19 extent applicable, and the Parties continue to discuss the timing and Plaintiffs' Initial Disclosure
 20 Requirements.

21 **B. Changes to Default Discovery Limits**

22 The Parties continue to confer regarding changing the default discovery limits to
 23 accommodate the scale and complexity of the litigation.

24 **VI. DISCOVERY STATUS**

25 Since the September 21, 2020 Case Management Conference, discovery-related
 26 developments include the following:
 27
 28

1 **A. Party Discovery**

2 ***Personal Injury Plaintiff Fact Sheets***

3 On September 21, 2020, the Court entered CMO 12 regarding Supplemental Plaintiff Fact
4 Sheets and Retailer Defendant Fact Sheets.

5 ***Government Entity Fact Sheets***

6 The Parties were unable to reach agreement on Government Entity fact sheets and
7 submitted competing fact sheets to Judge Corley for resolution. On October 9, 2020, Judge
8 Corley issued an order resolving many of the issues relating to the Government Entity fact sheets
9 and providing additional guidance to the Parties regarding finalizing of the fact sheets. As
10 directed by Judge Corley, the Parties are meeting and conferring and, if necessary, will submit
11 any narrow outstanding disputes to her by October 16th. Dkt. No. 1038. The Parties appreciate
12 Judge Corley's guidance and anticipate being able to reach agreement on any outstanding issues.

13 ***Class Representative Discovery***

14 The Parties continue to meet and confer concerning discovery of class representatives, and
15 will bring any remaining disputes to Judge Corley.

16 ***JLI***

17 *Status.* To date, Plaintiffs have served JLI with 390 requests for production of documents,
18 and 42 interrogatories (not including subparts). JLI has produced over 1.3 million documents,
19 constituting over 6.5 million pages of documents, all of which have been previously produced to
20 state and federal regulatory bodies investigating JLI. On October 7, JLI made its most recent
21 rolling production, which included over 300,000 documents. On October 8, 2020, JLI and
22 Plaintiffs reached agreement on search terms, and JLI and Plaintiffs have agreed to a set of
23 custodians, which includes 99 individuals. The parties are conferring over the date by which JLI
24 will substantially complete their document production and will bring disputes to Judge Corley
25 promptly.

26 *PMTA-related discovery.* On October 8, 2020, Judge Corley ordered JLI to produce the
27 Premarket Tobacco Product Application ("PMTA") it recently submitted to the FDA regarding
28 JUUL products on or before October 15, 2020. Dkt. No. 1036. JLI will produce the PMTA with
 and subject to heightened confidentiality protections, including those available under the

1 operative Protective Order. Parties will confer as to any additional PMTA-related discovery
2 Plaintiffs seek and bring any unresolved issues to Judge Corley.

3 *Rule 30(b)(6) depositions.* On August 31, 2020, Plaintiffs served their First Notice of
4 Deposition pursuant to Fed. R. Civ. P. 30(b)(6) regarding the design and development of JUUL,
5 sources of JUUL ingredients and the content of JUUL warnings, and JLI served its responses to
6 and objections to the Notice and the accompanying document requests on September 30, 2020,
7 while reserving all rights with respect to further motion practice if necessary. Plaintiffs served a
8 second notice regarding marketing and advertisements on October 5, 2020. Plaintiffs have
9 requested that JLI produce a witness or witnesses before the end of November. JLI has not
10 foreclosed the possibility of a witness on certain 30(b)(6) topics by the end of November,
11 provided that issues concerning sequencing, scope, and other objections are resolved such that the
12 timing works on the topics that the parties agree should and/or the Court rules may proceed. The
13 parties will meet and confer over scope of the topics and bring to Judge Corley any areas in
14 dispute promptly.

15 Plaintiffs anticipate noticing multiple 30(b)(6) depositions, with each notice covering
16 separate, non-overlapping topics. To the extent not covered in the topics noticed to date (design &
17 development, marketing), Plaintiffs have advised that they plan to seek to depose JLI regarding
18 sales, youth prevention, and product testing/safety. Plaintiffs reserve the right to add additional
19 non-duplicative topics to this initial list. JLI does not agree to waive its right to seek to limit
20 Plaintiffs to one 30(b)(6) deposition notice and are open to meeting and conferring with Plaintiffs
21 on whether additional topics may be added to the extant Notice.

22 *Privilege.* The parties continue to meet and confer regarding JLI's privilege log entries
23 and will bring any unresolved issues to Judge Corley promptly.

24 ***Altria***

25 Altria has responded to certain of Plaintiffs' interrogatories and requests for production.
26 Altria's production to date includes approximately 716,000 documents consisting of over 4.8
27 million pages, largely including documents previously produced to the FTC. Plaintiffs and Altria
28 have reached agreement on custodians and search terms. The parties are conferring over the date

1 by which Altria will substantially complete their document production and will bring disputes to
2 Judge Corley promptly.

3 Plaintiffs and Altria continue to meet and confer regarding Altria's responses to Plaintiffs'
4 written discovery and will bring any unresolved issues to Judge Corley promptly.

5 ***Director Defendants***

6 Plaintiffs and the Director Defendants continue to meet and confer regarding the Director
7 Defendants' responses to Plaintiffs' initial sets of written discovery and will bring any unresolved
8 issues to Judge Corley promptly.

9 ***Retailer, Distributor, and E-Liquid Defendants***

10 Plaintiffs served the Retailer Defendants with written discovery requests on August 17,
11 2020. Plaintiffs served the Distributor Defendants with written discovery requests on August 26,
12 2020. Plaintiffs served the E-Liquid Defendants with written discovery requests on June 24, 2020.
13 On August 24, 2020, Plaintiffs and the liaison counsels for the Retailer, Distributor, and E-Liquid
14 Defendants held a meet and confer teleconference to discuss custodian identification and ESI
15 search terms.

16 Plaintiffs and the Retailer Defendants held a meet-and-confer session on September 15
17 regarding these Defendants' responses to Plaintiffs' first set of interrogatories.

18 Plaintiffs and the Distributor Defendants held meet-and-confer sessions on September 25
19 and September 29 regarding proposed ESI custodian lists and various issues in connection with
20 Plaintiffs' first set of requests for production and first set of interrogatories. The Retailer and
21 Distributor Defendants have all provided Plaintiffs with their proposed ESI custodian lists.

22 **B. Coordination with JCCP on Discovery**

23 The MDL Plaintiffs are holding weekly calls with JCCP counsel regarding discovery
24 coordination. Defendants appreciate and encourage coordination between the MDL and the JCCP,
25 as detailed by the Joint Coordination Order (CMO # 9, ECF No. 572) and the Deposition Protocol
26 (CMO #10, ECF No. 573).

1 **C. Update Regarding Third-Party Subpoenas**

2 Plaintiffs have issued third party subpoenas to more than 153 entities or persons. A
3 number of recipients have produced documents, while negotiations are ongoing with numerous
4 others.

5 **D. Deposition Protocol and Joint Use of Vendors**

6 The Parties conferred and reached agreement regarding an amended Deposition Protocol,
7 filed on August 18, 2020 (Dkt. 888). After reviewing more than a dozen responses to Plaintiffs'
8 requests for proposals, testing multiple platforms, and reaching consensus with Plaintiffs'
9 leadership in the JCCP, Plaintiffs have selected a deposition vendor. Throughout this process,
10 Plaintiffs attempted to work with Defendants to jointly retain a deposition vendor to minimize
11 costs and promote efficiency, but those discussions have not progressed.

12 **VII. ADR STATUS**

13 Pursuant to Civil Local Rule 16-10(d), the Parties report that they continue to confer with
14 Settlement Master Thomas J. Perrelli and cooperate with his recommendations.

1 Dated: October 14, 2020

Respectfully submitted,

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